

***United States Court of Appeals  
for the  
District of Columbia Circuit***



**TRANSCRIPT OF  
RECORD**



TRANSCRIPT OF RECORD.

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Court of Appeals, District of Columbia

OCTOBER TERM, 1902.

No. 1235.

174

No. 11, SPECIAL CALENDAR.

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TIMOTHY SULLIVAN, APPELLANT,

*vs.*

LORENZO A. BAILEY, TRUSTEE.

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APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

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FILED JULY 15, 1902.



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# In the Court of Appeals of the District of Columbia

TIMOTHY SULLIVAN, Appellant, }  
vs. } No. 1235.  
LORENZO A. BAILEY, Trustee. }

a Supreme Court of the District of Columbia.

TIMOTHY SULLIVAN }  
vs. } No. 23306. In Equity.  
LORENZO A. BAILEY, Trustee. }

UNITED STATES OF AMERICA, } ss:  
District of Columbia, }

Be it remembered that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:—

1 *Bill of Complaint.*

Filed May 7, 1902.

In the Supreme Court of the District of Columbia.

TIMOTHY SULLIVAN }  
vs. } In Equity. No. 23306.  
LORENZO A. BAILEY, Trustee. }

To the honorable the justice of the supreme court of the District of Columbia, holding a special term for equity business:

The complainant respectfully represents:

1. That he is a citizen of the United States, resident of the District of Columbia, of lawful age and brings this suit in his own right with respect to the matters hereinafter set forth.

2. That the defendant is a citizen of the United States, resident of the District of Columbia, of lawful age, and is sued as trustee under a certain deed of trust hereinafter set forth.

3. That on, to wit: March 1st, 1902, and for some time prior, as well as subsequent thereto, the complainant was engaged in business as a licensed retail liquor dealer at premises No. 3206 M St. N. W., in the city of Washington, District of Columbia, and on said last-mentioned date being indebted to James Richardson and Abe King, trustees in the sum of \$1741.39 and to James Richardson,

as receiver, for the Consumers' Brewing Company in the sum of \$925.10, the complainant made, executed and delivered his certain

2 three several promissory notes bearing date the first day of March, 1902, one of said notes being in the sum of \$1741.39 payable to the said James Richardson and Abe King, trustees, or order and another of said notes for the sum of \$800.10 being made payable to the said James Richardson receiver, for the Consumers' Brewing Company or order and the other of said notes in the sum of \$125 payable to the said James Richardson receiver, for the Consumers' Brewing Company or order and each of said notes bearing interest at the rate of six per centum per annum and payable on demand and to secure the full and punctual payment of said notes the said complainant, together with his wife Teresa Sullivan, made, executed, and delivered a certain deed of trust bearing date the 1st day of March, 1902 and recorded on, to wit: March 18th, 1902, in Liber 2648 folio 11 of the land records of the District of Columbia, wherein and whereby the complainant and his said wife, granted, bargained and sold, or attempted or alleged to grant, bargain and sell unto the said defendant as trustee, the retail liquor license issued to the said complainant to do business at the place aforesaid and the good will, business personal property, fixtures, rights and privileges, lease or rights of possession, to the property; the cash register, bar counter, side-bar counter, lunch-bar counter, glassware, fixtures and paraphernalia of the saloon and liquor business as well as all furniture, goods and fixtures of every description in and upon said premises and place of business and that upon default being made in the payment of any part of the indebtedness secured by said deed of trust that each and every chattel and fixture and all wines, liquors and other stock in trade, applicable or

3 pertaining to the said saloon and liquor business wheresoever the same may be then situated were also conveyed in and by said instrument as will appear by a true copy thereof hereto annexed and marked Exhibit "A" and prayed to be considered and taken as part and parcel of this bill of complaint.

That the said deed of trust, Exhibit "A," further provided that the complainant should be permitted "to retain possession and make lawful use in the ordinary course of said saloon and liquor business of the license, lease, rights, privileges, good will, business, personal property and fixtures" in and by said deed aforesaid conveyed to the said defendant trustee; and that among other things, upon default being made in the payment of said indebtedness on demand the said defendant should, upon the request of the holder of any of the said notes secured in and by said deed of trust "take immediate possession of the place of business and all and singular the license, leases, good will, rights, privileges, personal property and fixtures as aforesaid wheresoever the same may be found and sell the same at public or private sale at such time or times, place or places and upon such terms and after such notice as to the said party of the second part shall seem advantageous;" said trust further provides that out of the proceeds realized from the sale of said prop-



erty under said deed of trust by the defendant, the said trustee shall "pay all proper costs and charges and expenditures paid or incurred by said party of the second part (the defendant) or the holder of any of said notes and in and about the execution of these trusts, including also a reasonable attorney's fees not exceeding \$50 and the proper and necessary expenses of any litigation in and about the preservation of the property and security as aforesaid or in the execution of these trusts and also to retain a sum equal to five per centum of the proceeds of said sale or sales as a compensation." That the complainant has ever since the making of said deed of trust been in possession of the property covered thereby, except the personal property, goods and stock in trade sold and disposed of by him, to customers and dealers with said complainant.

4 The complainant further says that at the time of the execution of the said deed of trust set forth in the third paragraph hereof, the beneficiary thereunder to wit: the said Richardson as trustee and receiver and the said defendant Bailey, as trustee and agent of the beneficiaries under said deed of trust, as trustee and receiver as aforesaid in consideration of the execution of said notes and deed of trust offered and agreed to and with the complainant, that they, the said Richardson and the said defendant Bailey in the capacities aforesaid, as this complainant was advised they were authorized to do would improve or see that the property used and occupied by the complainant for his business aforesaid was improved and that an expenditure would be made on account thereof in the sum of, to wit: one thousand dollars and that a part of the improvements so to be made as aforesaid under the agreement aforesaid was to bring the entrance to the plaintiff's said business place aforesaid, which was at the time aforesaid, below the level of, to wit: M street on which the same fronted, to a level with the sidewalk and pavement of said street and further at the time aforesaid, agreed to and with the said complainant that they would obtain for him a five years lease upon and for the said premises aforesaid; and the said complainant says that in consideration of the said agreement and contract on behalf of the said parties aforesaid he made, executed and delivered the said notes and the said deed of trust aforesaid.

5 And the complainant says that so to keep said agreement, the said parties aforesaid have and each of them failed, neglected and refused.

The complainant further says that the said Richardson, together with the said King, trustees as aforesaid, and the said Richardson, receiver, as aforesaid, are now and ever since have been since the execution of said trust holders of the said notes secured in and thereby.

5. The complainant further says that from the date and recording of said instrument, Exhibit "A," to the present time, the said James Richardson, one of the holders of the notes secured under said deed of trust was a frequent visitor on business to the complainant's said place of business, and during such time aforesaid, the Consumers'

Brewing Company with which said Richardson was connected as agent and official, and the same Consumers' Brewing Company mentioned in said deed of trust, and with whom the complainant was dealing in the purchase of beer, was aware of the fact that the complainant was selling to purchasers and using for the purpose of removing from said premises, and the same was so removed therefrom by said purchasers, beer, whiskey and other liquors and goods of which fact the said Richardson and Bailey well knew, that were upon said premises at the time of the giving and execution of the said deed of trust aforesaid, and then a part of the stock in trade of the complainant, and the complainant further says that the stock in

6 trade, and personal property now upon said premises, to be used in said business of complainant, and advertised for sale as hereinafter set forth, is not the stock in trade or the personal property that was upon said premises at the time of the execution of said trust, the recording thereof, the demand for payment of said indebtedness described in said deed of trust by the holder or holders of said notes, nor the stock in trade or personal property, that will be therein at time of sale under the advertisement hereinafter referred to, but totally different stock in trade and personal property.

The complainant further says that the deed of trust in no way requires that the money realized from such use or sales as authorized by said trust should be used in the purchase of goods, beer, whiskey and other merchandise to carry on said business, and replace and renew the stock so sold and used.

6. The complainant further says that being indebted to the said Consumers' Brewing Company, with which said Richardson, as aforesaid was and is connected as an official and agent, for the sum of, to wit, \$35, for beer purchased of said company and used in the complainant's said business since the execution and recording of said deed of trust aforesaid, payment thereof was demanded of him by the said Richardson and as the complainant was unable to pay the full amount of such indebtedness, and the said Richardson refused to accept from complainant a part thereof on account, demand was made, by said Richardson, as trustee and receiver, of this complainant for the payment of the notes secured by said deed of trust, and complainant refusing to pay the same, the said Richardson as  
7 this complainant is informed and believes, and upon such information avers the fact to be, requested the defendant, as trustee, to advertise the complainant's property under said deed of trust, which he accordingly did as shown by a true copy of such advertisement annexed hereto as part hereof and marked Exhibit "B."

The complainant further says that said advertisement was first inserted upon, to wit: Sunday, May 4th, 1902, in the Washington Times, a daily newspaper published in this city and District, and the complainant says that such advertisement for sale of said property on Wednesday, May 7th 1902, is not such reasonable time as the law requires.

7. The complainant further says, that neither prior to said advertisement aforesaid, or at any time, has the defendant, as trustee, since the demand for payment of said notes aforesaid, secured as aforesaid, and default in such payment, taken possession of said property as required by said deed of trust, which as this complainant is advised is a condition precedent to the advertisement and sale of said property by said defendant trustee, nor has the defendant, as trustee, ever demanded of the complainant, or any one on his behalf such possession and no lawful advertisement or sale thereof can therefor be made by said defendant, trustee, nor is the advertisement, Exhibit "B," or the sale proposed to be made by said trustee in conformity therewith legal, nor could the same be so under said advertisement.

8. Complainant further says that in and by said advertisement aforesaid the said defendant, trustee, offers, proposes and threatens to sell and will offer for sale the license issued to the complainant as a retail liquor dealer by the excise board of the District of Columbia, which action or contemplated action by said defendant, trustee, is wholly illegal, and without warrant or authority of law, and wholly void; that under the law, the license issued to this complainant, is a personal privilege, which is not assignable or transferable, and no rights could be acquired thereunder by any one purchasing at said sale, under and by virtue of said advertisement and deed of trust, nor is it lawful for said defendant trustee, to advertise the sale of such license under and by virtue of said deed of trust, nor could a deed of trust be given on said license.

9. The complainant further says that said deed of trust authorizes and empowers the defendant trustee, to pay "the proper and necessary expenses of any litigation in and about the preservation of the property and security as aforesaid, or in the execution of these trusts and also to retain a sum equal to five per centum" &c. and the complainant says that it was sought in and by such provision to take away from the complainant his legal right in the premises and prevent him from taking such legal action in the premises as his interests may require by imposing upon him the burden of costs and expenses of protecting his rights which is an unlawful deprivation or attempted deprivation of the legal rights of the complainant, and an unlawful interference therewith.

10. That the property covered and described in the deed of trust and the personal interest of the complainant therein, is all the property, real or personal, that the complainant owns or has any interest in.

11. That unless restrained by this honorable court the defendant will offer for sale and sell, under said advertisement, and thus dispose of, the complainant's rights in the premises. The premises considered the complainant prays:

1.

That process may issue in due form directed to the defendant commanding and directing him to answer the exigency of this bill of complaint.

2.

That a temporary restraining order may be issued herein restraining and enjoining the defendant from selling or offering for sale the property described in the deed of trust and said advertisement, Exhibit "B," at the time and place named therein, or at any time, until the further order of the court.

3.

That upon final hearing said temporary restraining order may be made permanent and the said defendant perpetually restrained and enjoined from selling or offering for sale the property described in said deed of trust, under and by virtue of the terms thereof, and in accordance with said advertisement.

4.

That the complainant may have such other and further relief in the premises as the nature of the case may require and to the court may seem meet and proper.

The defendant to this bill of complaint is Lorenzo A. Bailey, trustee.

TIMOTHY SULLIVAN.

10 Timothy Sullivan being duly sworn according to law deposes and says: That he has read over the bill of complaint by him subscribed and knows the contents thereof, that the facts therein stated of his own knowledge are true and the facts therein stated on information and belief, he believes to be true.

TIMOTHY SULLIVAN.

EDWIN FORREST,  
JOSEPH SHILLINGTON,  
*Attorneys.*

Subscribed and sworn to before me this 7th day of May, 1902.

ALBERT H. SHILLINGTON,

[SEAL.]

*Notary Public.*

11

EXHIBIT "B."

Under and by virtue of a deed of trust, recorded March 18, 1902, in Liber 2648, folio 11, of the land records of the District of Columbia, and at the request of the parties secured thereby, I will offer for sale, at auction, to the highest bidder for cash, at 4 o'clock p. m., on Wednesday, May 7, 1902, at the premises No. 3206 M street northwest, Washington, D. C., one cash register, one front-bar counter, one side-bar counter, one lunch-bar counter, one lot of shelving, one buffet, one stove, two ice-boxes, one clock, one show-case, all stock in trade, glassware, fixtures, and paraphernalia of the saloon and liquor business and all furniture, goods, and fixtures of every description now in the possession of Timothy Sullivan at said premises, together with the bar-room business, and all rights under the bar-room license

now standing in his name at said premises, and all rights transferable with said license. Purchase price must be paid within one week after sale, and \$100 thereof at time of sale.

LORENZO A. BAILEY,  
Trustee, Pacific Building, Washington, D. C.

12     *Restraining Order, upon the Complainant Filing Undertaking as Required by Equity Rule 42.*

The defendant is hereby restrained as prayed in the within-mentioned bill, until further order, to be made, if at all, after a hearing, which is fixed for the 10th day of May, 1902, of which take notice.

By the court:

A. C. BRADLEY, *Justice.*

*Answer to Bill of Complaint.*

Filed May 12, 1902.

In the Supreme Court of the District of Columbia.

TIMOTHY SULLIVAN	}	No. 23306. In Equity.
vs.		
LORENZO A. BAILEY, Trustee.		

The answer of Lorenzo A. Bailey, trustee, defendant, to the bill of complaint of Timothy Sullivan.

This defendant, reserving to himself all and all manner of advantage or benefit of exception that may be had or taken by reason of the many errors, uncertainties and imperfections in said bill of complaint appearing, for answer to said bill or to so much as he  
13     is advised it is necessary or material for him to answer, says as follows:

1, 2. The statements contained in the first and second paragraphs of said bill, as to citizenship and residence of the parties, are true.

3. The statements contained in the third paragraph of the bill are true except as to the date of the execution and delivery of the notes and deed of trust and the amount of the indebtedness therein mentioned and excepting also so much thereof as purports to set forth the contents or effect of said deed of trust.

The said notes and deed of trust were executed at some time during the period commencing on the 6th day of March, 1902, and ending on the 10th day of March, 1902, on which latter date they were by the complainant delivered to this defendant duly executed.

The actual indebtedness represented by said note for \$800.10 on the date thereof was \$778.10 and no more and the difference, \$22, was credited by endorsement on the back of the note before the note was signed by the complainant. In all other respects the amount of indebtedness was as stated in said third paragraph.

The original of said deed of trust together with the notary's cer-

tificate of the acknowledgment thereof dated March 10, 1902, and the certificate of the recorder of deeds endorsed thereon, are filed herewith marked Exhibit Def't No. 1, and made part of this answer.

4. So much of said bill as is contained in the paragraph numbered fourth thereof alleging an agreement concerning improvement of property and an expenditure of money for such improvement, and also so much thereof as alleges an agreement for a lease, and also so much thereof as purports to state the consideration for said notes and deed of trust, is untrue. The facts in this connection will be fully set forth in a subsequent paragraph No. 13, of this answer. It may be sufficient, however to refer to the 3d paragraph of the bill wherein the actual consideration for said notes and deed of trust is truly represented as a then existing valid indebtedness.

This defendant is advised that even if the matters alleged in said fourth paragraph were true they would furnish no ground on which this court should deprive the holders of said notes of the benefit of the security intended and sought to be given to them by means of said deed of trust, inasmuch as the consideration for said deed of trust is truly stated in said deed of trust and in the 3rd paragraph of said bill, and the complainant is estopped from denying the same, and also because the statements contained in the said 4th paragraph touching the consideration of said notes are inconsistent with the statements contained in said 3rd paragraph and the recitals in the deed of trust on that subject and also because Abe King, trustee, one of the holders of said notes is not alleged to be a party or privy to the alleged agreements and transactions complained of in said 4th paragraph and also because said King and Richardson, trustees, and said Richardson, receiver, are not made parties to the said bill, although it appears on the face of the bill that they are interested in the subject-matters thereof; wherefore this defendant objects to so much of said bill as alleges or intimates want or failure of consideration for said notes or for said deed of trust and he prays the same benefit of this objection as if taken by demurrer.

15 5. It is true that said Richardson was a frequent visitor on business to the complainant's said place of business but not as a customer of the complainant, whose habits of procrastination touching the payment of his accounts for beer furnished him by said receiver have long ago become chronic and incurable. It is also true that the brewing company and said Richardson knew or had reason to believe that the complainant was actually selling beer and possibly other liquors at his bar-room but it is not true that this defendant or said company or said Richardson knew that the complainant since the date and recording of said deed of trust was selling to purchasers or using for the purpose of removing from said premises or allowing to be removed therefrom as alleged in the bill any of the personal property which was subject to the lien of said deed of trust other than the ordinary stock in trade of a bar-room, upon which said stock in trade no lien was sought or intended to be created by said deed of trust except such as remained the property



of the complainant at the time of default as provided in the deed of trust; but as to the other personal property of the complainant which was covered by said deed of trust, this defendant hopes, in view of section 839 of the new code for this District, that said property will be found where it ought to be at the proper time. The complainant's stock in trade and other personal property aforesaid are and ever were insufficient security for the notes of March 1, 1902, the real security therefor being the rights transferable under said license as the complainant ever well knew.

This defendant is advised that the complainant has no real grievance touching the matters alleged in the 5th paragraph  
16 of said bill which can be discovered by counsel learned in the law: Wherefore this defendant objects thereto and prays the same benefit of this objection as if taken by demurrer.

6. The statements purporting to be of facts contained in the 6th paragraph of said bill are substantially true except that the amount of the debt for beer was \$34.75 and the same was due to said Richardson as receiver for Consumers' Brewing Company and not to the company and demand for payment of said debt was made by said Richardson as such receiver and the advertisement was made in the Washington Post and not in the Washington Times.

7. It is true that this defendant desiring to avoid any unnecessary interference with the complainant's business, has not sought to deprive him of possession or the opportunity to do business up to the very time of the proposed sale, but this defendant says he directed the auctioneer, Mr. James W. Ratcliffe, who was employed by him to cry the proposed sale, to set a card, giving notice of such sale in the front window of the complainant's place of business and this defendant is informed and believes and so avers that on the morning of the 6th day of May, 1902, the servant of said auctioneer, pursuant to the desire of this defendant to secure as large a price as possible for the property proposed to be sold, for the benefit of the complainant as well as all others interested in such sale, called at the complainant's place of business and offered or attempted to put up such card there but was prevented from so doing by the complainant or by his bartender acting for him.

17 8. This defendant has not by said advertisement offered, proposed or threatened to sell the license mentioned in the 6th paragraph of said bill. What he has offered and proposed to sell is set forth in the advertisement itself a copy whereof is filed with said bill and is here referred to. The complainant is invited to read the same.

This defendant proposed to sell whatever rights were transferrable under said license and no more than the complainant authorized him to sell in and by said deed of trust whereby the complainant is estopped to allege or complain of the matters set forth in said 8th paragraph, and this defendant relies upon this objection to said matters and asks the same benefit of this objection as if taken by plea.

9. This defendant admits his inability to comprehend how the

provisions in the deed of trust complained of in the 9th paragraph of said bill can possibly deprive the complainant of any legal right he ever possessed or why it should operate as a restriction or denial of the legal rights of the parties secured by said deed of trust. This defendant denies that it was sought in and by said provisions to take away from the complainant any of his rights or to interfere therewith.

10. The statements contained in the 10th paragraph of the bill are true, as this defendant is informed and believes, and this thought has been in the mind of the defendant when he made every effort to secure as large a price as possible for said property.

18      11. It is true that unless restrained by this court this defendant would have proceeded to make the sale as advertised, but immediately upon being informed of the restraining order granted in this cause, being in doubt as to whether or not he might properly, to save time and expense, allow the advertisement to continue with notice of postponement of sale, he concluded, in accordance with the advice of counsel, that his duty was to avoid any such doubt by stopping the advertisement at once, which course he adopted.

12. This defendant, being advised that paragraphs numbered 6, 7, 8, 9, 10 and 11, respectively, contain no matter of equity whereon this court can found any decree against him, objects thereto, and he also objects to the whole bill which upon its face is defective for failure to name James Richardson and Abe King therein as parties defendants thereto, and prays the same benefit of these objections as though taken by demurrer.

13. Further answering said bill this defendant says as follows:—

In April, 1899, George W. Stegmaier was a licensed retail liquor dealer at the place of business mentioned in said bill. Stegmaier then sold his said license and business and the equipment and paraphernalia of the business to the complainant Sullivan who gave in

19      payment or part payment therefor his promissory note dated April 8, 1899, for the sum of \$1776.45 payable on demand to the order of said Stegmaier and at the same time made and delivered a deed of trust conveying to trustees all said license, equipment and paraphernalia to secure payment of said note, which said deed was duly acknowledged and recorded on April 17, 1899, in Liber No. 2386 at folio 199 of the land records of said District. The said license was then transferred to the complainant and has ever since then been renewed from year to year in the name of the complainant and is the same license so renewed which is mentioned in the bill of complaint and in the deed of trust therein mentioned.

Thereupon Stegmaier endorsed said note in the ordinary course of business, for value, to Consumers' Brewing Company, a corporation created, organized and existing under the laws of the State of Virginia, and having its brewing plant and principal office at Rosslyn, at the south end of the Aqueduct bridge in Alexandria county, Virginia.



At the same time Stegmaier, who was tenant of said premises under a lease, assigned said lease to said company with the consent of the lessor and the company held said lease as part of its security for said note.

Then and thereafter the complainant was and continued to be a customer of said company and said receiver until on or about the 23rd day of April, 1902, when the receiver discontinued the sale and delivery of beer to him because of his refusal to pay his debt of \$34.75 as hereinafter stated.

In November, 1900, the complainant was charged in the police court of said District with keeping his bar-room open on Sunday and also with selling liquor on Sunday upon which charge he was convicted, in consequence whereof the excise board refused  
20 to grant him a renewal of his license aforesaid for the year commencing November 1, 1900, until Oct. 31, 1901, and withheld a renewal of said license for the year commencing November 1, 1901, until February 15, 1902, which renewals would not have been secured without the strenuous efforts put forth on his behalf by said company and Richardson, the company's president, and this defendant, its attorney.

Meantime, on September 25, 1901, said Richardson was by the circuit court of the United States for the eastern district of Virginia, duly appointed and qualified and has ever since then been acting as receiver in charge of the business and assets of said company with authority among other things to carry on its business subject to the orders of said court.

In the latter part of the year 1900 or early in the year 1901, and from time to time since then, this defendant, believing that the complainant, by reason not only of the prosecution aforesaid, which resulted in the affirmance of said conviction by the Court of Appeals, but also by reason of the complainant's personal habits and incapacity would never succeed in said business and seeing his indebtedness to said company and to others constantly increasing, advised the complainant, as did others also, to find a purchaser of his said license, business and equipment and sell out but the complainant failed or neglected to do so, though he had opportunities therefor, as this defendant is informed and believes.

In September, 1901, the lease which had been assigned to the company as aforesaid expired by its own limitations. The landlord has  
21 ever refused to grant a new lease to the complainant or to recognize him as a tenant but looked to the brewing company for the rent.

On January 18, 1902, the complainant executed a deed of trust to secure an alleged indebtedness of \$1500 to a third party giving as security therein the same property covered by the said deed of trust to this defendant. This deed of trust of January 18th was recorded on January 20, 1902, in the land records of said District and was believed by this defendant and said Richardson and King to be intended as a menace of the rights secured by the deed of trust to this defendant.

In January, 1902, the landlord made demand of the complainant to surrender possession of said premises and brought suit before Justice of the Peace Paine for such possession but at the request of said receiver the landlord postponed such proceedings from time to time for the benefit of the complainant. In this condition of things on or about February 24, 1902, the landlord, Capt. Bryant, his agent Mr. Dulaney, the complainant Sullivan, the said receiver Richardson and this defendant, acting as attorney for said receiver, met at Mr. Dulaney's office in Washington city, District of Columbia, to consider what should be done concerning the complainant's occupancy of the premises, he being then largely in arrears for rent and on his account for beer with the said receiver. Capt. Bryant then and there refused to make a lease to Sullivan, the complainant, or to recognize him as tenant, but declared he would hold the brewing company and its receiver liable for all rent in arrear and all rent to accrue during the complainant's occupancy. He also stated his willingness to give a lease of the premises for a term of five years to some responsible person from whom he could secure prompt payment of rent and that upon securing such a tenant he was

22      willing to expend \$1,000 in repairing and improving the property for hotel and bar-room purposes. It was then suggested that said Richardson take the lease and become thereby liable individually for rent and allow the complainant to continue there in business. Richardson took the matter under consideration and entered into negotiations with said Bryant for a lease of which several drafts were prepared but none ever finally agreed upon as satisfactory to both of them. The complainant was present and heard all that was said and suggested at said meeting as above stated.

Thereupon this defendant as attorney for said receiver informed the complainant that he could no longer advise further indulgence to the complainant on the part of said receiver and that a foreclosure under the deed of trust of April 8, 1899, would be had unless the complainant would either pay the debts secured thereby or else give new security. The complainant accordingly agreed to give and did give the notes and deed of trust of March 1, 1902, as such new security and secured a release of the deed of trust dated January 18, 1902, above-mentioned which release was duly recorded on March 18, 1902, when the new deed of trust of March 1, 1902, was recorded, and the note for \$1776.45 secured by said deed of trust of April 8, 1899, was then cancelled.

On March 6, 1902, this defendant wrote and delivered a letter to the complainant enclosing therewith the notes and deed of trust dated March 1, 1902, which letter is in words and figures as follows:

23

MARCH 6, 1902.

Mr. Timothy Sullivan, 3206 M St. N. W., city.

DEAR SIR: I hand you herewith three notes to be signed by you, and also a chattel trust to be signed and acknowledged by yourself and your wife securing said notes.

One of these notes is for \$1741.39 to James Richardson and Abe King, trustees, or order. This is for \$1627.41 principal and \$113.96 for interest on your former chattel trust note of April 8, 1899, and held by said trustees.

Another of these notes payable to James Richardson, receiver, includes \$31.80 for loan; \$229.70 for keg beer; \$45.50 for keg porter; \$41.10 for bottled beer; \$22 for costs advanced by Consumers' Brewing Company in your certiorari case; \$222.50 for rent up to September 25, 1901, and \$207.50 for rent from that date to March 1st, amounting in all to \$800.10 as stated in the note. On this note I endorse a credit for \$22 as I find it was included in the \$31.80 for loan.

The third note payable to James Richardson, receiver, or order, is for \$125 on account of my services rendered for you in court and before the excise board and that will settle the account between you and me.

These notes cover all interest and the open account against you to and including Feb. 28, 1902. It is impossible at this time for Mr. Richardson to furnish you with an itemized statement as you requested running back several years. You should have called for such a statement as soon as you thought there was any error in the

24      account of your prejudice. I do not know of any error or overcharge in the account but if you think so you should at the earliest opportunity call at the brewery with your books, receipts and vouchers and go over the account with the book-keeper there. If any mistake exists in the account against you it will be corrected if you point it out at an early date. You will have to attend to that at the brewery. I cannot undertake to go through the accounts with you, at least not until you have gone over the whole matter with the book-keeper.

I also enclose herewith a release which you should have executed by Messrs. Ryan and Earl and return it to me. You should also bring me a release of the chattel trust which you gave Mr. Hood.

Very truly yours,

L. A. BAILEY.

The statements contained in said letter are true. The release therein mentioned to be executed by Messrs. Ryan and Earl was for the release of the deed of trust of April 8, 1899, the note secured thereby having been canceled, and the other release therein mentioned was for the release of the \$1500 deed of trust of January 18, 1902, aforesaid. On or about March 10, 1902, the complainant brought said notes and deed of trust of March 1, 1902, back and delivered the same duly executed to this defendant. This was done without any agreement such as is alleged in the fourth paragraph of said bill.

25      The understanding by and between the complainant and said Richardson as receiver for the brewing company was to the effect that the complainant would pay the rent for said premises at the rate of \$75 per month on the 1st day of each week in advance to said receiver and would also pay upon delivery in cash for

all beer to be sold and delivered by said receiver to the complainant and that upon the complainant's failure so to do, payment of the notes secured by said deed of trust would be demanded, but if the complainant fully complied with said understanding then said Richardson would endeavor to keep the complainant in possession of said premises, and with this the said Richardson fully complied. It was also understood that if Richardson could secure a lease for the premises on terms satisfactory to him he would do so and that Bryant would thereupon make the improvements and repairs aforesaid but Richardson never agreed with the complainant to obtain a lease to the complainant or to have the improvements or repairs made, and of this and all other statements in this answer concerning transactions between Richardson and the complainant this defendant is fully informed by means of his relation to the matter as attorney for said receiver and through his conversations with the complainant and otherwise.

On April 23, 1902, the said Richardson informed this defendant who believes the fact to be, that at half past 10 o'clock that morning he had asked the complainant to pay \$34.75 which he then owed to said receiver for beer sold and delivered to the complainant since March 1, 1902, and that the complainant had offered him part only of said amount as was his habit and refused to pay the whole of said sum of \$34.75; that thereupon Richardson demanded also of  
26 him payment of \$60 which the complainant owed for rent for that month of April but the complainant only paid \$20 thereof; that thereupon Richardson demanded payment of the notes held by him as receiver and trustee respectively and secured by and under said deed of trust of March 1, 1902, but the complainant refused to pay the same and said, "I owe you nothing. Take your old counters out of here," or words to that effect. Thereupon the said Richardson as receiver and said Richardson and King as trustees requested this defendant to proceed to collect the amount of the notes held by them by sale as provided in said deed of trust, which this defendant proceeded to do. But first he wrote a letter and sent it to the complainant in words and figures as follows, viz:

"APRIL 24, 1902.

Mr. Timothy Sullivan, 3206 M St. N. W., city.

DEAR SIR: Please take notice that pursuant to your deed of trust dated March 1, 1902, and recorded in Liber 2648, folio 11 of the land records of this District, and at the request of the persons thereby secured, I will proceed tomorrow to advertise for sale at auction on May 1, 1902, at 4 p. m., at your place of business, the license, business and property in said deed of trust mentioned.

Very respectfully,

L. A. BAILEY, *Trustee.*"

27 On or about Friday, April 25, 1902, Mr. Jos. Shillington, a member of the bar of this court and of counsel for the complainant in this cause, informed this defendant that the complainant had consulted him about said sale and had hopes of being

able to raise the money to pay the indebtedness secured by said deed of trust and to enable the complainant to do this Mr. Shillington asked this defendant not to proceed with advertisement of sale until Wednesday or Thursday of the following week, to which this defendant consented. On or about Friday, May 2, 1902, this defendant called on Mr. Shillington to learn what the complainant would do in the matter and was informed by Mr. Shillington in effect that the complainant had not secured the means to pay his said debt and that he did not know any way to do so. This defendant then said to Mr. Shillington that a sale seemed unavoidable and that he proposed to advertise at once for a sale about four days later and asked Mr. Shillington if that would be considered reasonable time to which Mr. Shillington responded to the effect that he then saw no objection to an advertisement for that length of time. The advertisement was accordingly inserted in the Post as hereinbefore stated at an expense of \$9.50.

A little after noon on May 7, 1902, notice of the granting of a restraining order in this cause was served on this defendant who immediately stopped proceedings to sell until the restraint shall be removed if at all.

The complainant is not reducing his indebtedness secured by said deed of trust but the same is increasing. According to the understanding between the complainant and said receiver the complainant should pay each morning in cash for beer then to be delivered to him and a certain percentage of each payment made by him was to

28 be credited on said demand notes which percentages to this time amount in all to \$27.40 which is credited on said note for \$800.10 and the amount now overdue, payable and unpaid secured by and under said deed of trust is \$2,617.09 with interest on said notes and the expenses of said advertisement and of these proceedings, together with \$40 of unpaid rent for April, 1902, and \$75 for rent for May 1902, and \$34.75 on said beer account, all due to said James Richardson, receiver except the note for \$1741.39 which is due to Richardson and King, trustees, and the note for \$125, which is due to this defendant.

This defendant is informed and believes and so avers that since March 18, 1902, various judgments for money have been rendered against the complainant and are now unsatisfied; that the complainant is largely indebted by reason of said judgments and otherwise in addition to debts secured by said deed of trust; that the complainant is without means or credit to carry on his said business and that the persons secured by said deed of trust will sustain great and irreparable injury and loss unless permitted to proceed with the enforcement of their security aforesaid.

Wherefore, the defendant prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

LORENZO A. BAILEY, *Trustee.*

DISTRICT OF COLUMBIA, ss :

I, Lorenzo A. Bailey, do solemnly swear that I have read the foregoing answer by me subscribed as trustee and know the contents thereof; that the facts therein stated upon my personal knowledge are true and those therein stated upon information and belief I believe to be true.

LORENZO A. BAILEY.

Subscribed and sworn to before me this 9th day of May, A. D. 1902.

[NOTARIAL SEAL.]

IVAN HEIDEMAN,  
*Notary Public in and for said District.*

DISTRICT OF COLUMBIA, ss :

James Richardson, being first duly sworn, says upon his oath as follows: I have heard read the foregoing answer of Lorenzo A. Bailey, trustee, to the bill of complaint of Timothy Sullivan and know the contents thereof. I am the same James Richardson mentioned in said answer. The facts stated in said answer are true as I verily believe and as to all the matters and transactions therein mentioned in which said answer states I participated the same is true of my personal knowledge.

JAS. RICHARDSON.

Subscribed and sworn to before me this 9th day of May, A. D. 1902.

[SEAL.]

IVAN HEIDEMAN,  
*Notary Public in and for said District.*

30 EXHIBIT DEFENDANT No. 1.

Filed May 12, 1902.

This indenture, made this first day of March, A. D. nineteen hundred and two, by and between Timothy Sullivan and Teresa R. Sullivan, his wife, parties of the first part, and Lorenzo A. Bailey party of the second part, witnesseth, that whereas, the said Timothy Sullivan is a duly licensed retail liquor dealer in the District of Columbia and is the owner and proprietor of the saloon and liquor business now conducted by him under and by virtue of said license at the place of business hereinafter mentioned and also of certain personal property and fixtures there situate; and whereas, the said Timothy Sullivan is justly indebted unto James Richardson and Abe King, trustees, in the full sum of seventeen hundred and forty-one and 39/100 dollars and also to James Richardson, receiver for the Consumers' Brewing Company, in the further sum of nine hundred and twenty-five and 10/100 dollars, and as evidence thereof has made his three several promissory notes of even date herewith payable on demand, one of said notes being for the sum of seventeen hundred and forty-one and 39/100 dollars payable to the said James



Richardson and Abe King, trustees, or order, and one other of said notes being for the sum of eight hundred and 10/100 dollars payable to the said James Richardson, receiver for Consumers' Brewing Company, or order and one other of said notes being for the sum of one hundred and twenty-five dollars payable to the said James Richardson, receiver for Consumers' Brewing Company or order, with interest on each of said notes at the

31 rate of six per centum per annum: and whereas the said parties of the first part desire to secure the full and punctual payment of said notes: Now therefore, the said parties of the first part, in consideration of the premises and also of the sum of one dollar at and before the sealing and delivery hereof to them in hand paid by said party of the second part, have granted, bargained, sold, assigned and delivered, and by these presents do grant, bargain, sell, assign and deliver unto the said party of the second part, his executors, administrators and assigns, all and singular the license and licenses, good will, business, personal property, fixtures, rights and privileges, hereinafter mentioned and referred to, that is to say (1) the good will and all rights, privileges and benefits of the saloon and liquor business now conducted by the said Timothy Sullivan at the place of business known as No. 3206 M street, northwest in the city of Washington, in the District of Columbia and (2) each and every lease or right of possession of said place of business and every part thereof now and hereafter held or claimed by said parties of the first part or either of them and (3) each and every license for the sale of liquor at said place — business or elsewhere in said District now or hereafter held or claimed by said parties of the first part or either of them and every renewal and extension and all right of renewal, extension or transfer of every such license, and (4) one cash register, one front bar counter, one side bar counter, one lunch bar counter, one lot of shelving, one buffet, one stove, two ice-boxes, one clock, one show-case, all glassware, fixtures and paraphernalia of the saloon and liquor business, and all furniture, goods, and fixtures of every description, now in the pos-

32 session of said parties of the first part or either of them at said place of business and premises, and also (5) all the right, title, interest or claim of said parties of the first part or either of them at the time of any default hereunder in and to each and every chattel and fixture, and all wines, liquors and other stock in trade applicable or pertaining to the said saloon and liquor business wheresoever the same may be then situate and also every license to the said parties of the first part or either of them then belonging for the sale of liquor at said place of business or elsewhere in said District: To have and to hold the same and every part thereof unto and to the use of the said party of the second part, his executors, administrators and assigns, in and upon the trusts and for the uses hereinafter specified, that is to say, in trust, to suffer and permit the said Timothy Sullivan to retain possession and make lawful use in the ordinary course of said saloon and liquor business of the licenses, leases, rights, privileges, good will, business, personal property and fixtures aforesaid until default in the payment of said notes or any

of them, and upon the payment of all said notes and all sums of money becoming due hereunder, to reconvey the same to and at the cost of the said Timothy Sullivan, his executors, administrators, or assigns, without any charge for executing such reconveyance or otherwise for his services as trustee hereunder, except as herein specifically provided: And upon this further trust, at any time hereafter, upon the security hereby given being in anywise endangered in the opinion of said party of the second part, or the holder of any of said notes by the act or default of said parties of the first part or either of them, contrary to the

covenants and agreements on their part herein contained  
33 or any of them, or by the non-payment of rent for said place of business, or by the non-payment of storage or other charges which may become a lien thereon, or by the rendering of a judgment or decree against said parties of the first part or either of them, then and in any of said events the said notes shall become and be due and payable forthwith without either presentment or demand for payment, the same being hereby expressly waived: And upon this further trust, upon default being made in the payment of any of said notes, when due and payable or any proper cost, charge, commission or expense in and about the same, then and at any time thereafter the said party of the second part, at the request of the holder of any of said notes, shall take immediate possession of the place of business and all and singular the licenses, leases, good will, rights, privileges, business, personal property and fixtures aforesaid, wheresoever the same may be found, and sell the same at public or private sale, at such time or times, place or places, and upon such terms and after such notice as to the said party of the second part shall seem advantageous and proper, and convey, transfer and deliver the same to the purchaser or purchasers who shall not be required to see to the application of the purchase-money, and shall apply the proceeds of such sale or sales in the manner and for the purposes hereinafter specified, that is to say: firstly, to pay all proper costs and charges and expenses paid or incurred by said party of the second part or the holder of any of said notes in and about the execution of these trusts, including also a reasonable attorney's fee not exceeding fifty dollars and the proper and necessary expenses of any litigation in and about the preservation of the property and security aforesaid or in the

34 execution of these trusts, and also to retain a sum equal to five per centum of the proceeds of said sale or sales as compensation for his services as such trustee; and secondly, to pay whatever may then remain unpaid of said notes, principal and interest; and thirdly, to pay all indebtedness of every character then owing from the said Timothy Sullivan to the said James Richardson, receiver as aforesaid, or to the said Consumers' Brewing Company, its successors or assigns, whether the same be overdue or not, and lastly, to pay the surplus then remaining, if any there be, to the said Timothy Sullivan his executors administrators or assigns. And the said parties of the first part hereby covenant and agree with the said party of the second part, his executors, administrators and assigns,



that the said parties of the first part, their executors, administrators and assigns, shall and will at any and all times hereafter, upon the request of the said party of the second part, or his assigns, make, acknowledge and deliver such and every other and further deed, assignment and other assurance the more effectually to secure payment of said indebtedness as the said party of the second part or his assigns shall or may require, and also at the request of the said party of the second part or his assigns, to transfer, assign and deliver to him or his assigns, all and singular the licenses, rights, privileges, business property and fixtures aforesaid and every part thereof and not to remove the same or any part thereof from said place of business without the consent in writing first had and obtained of the said party of the second part or of all the holders of all said notes then unpaid, and also to keep said property insured against fire to the satisfaction of the holders of said

35 notes for the amount due thereon and hereunder and assign the policy of such insurance to the party of the second part as part of the security for the indebtedness hereby sought to be secured and also to pay the premium and the other charges for the insurance aforesaid, and also to pay said notes and all rent for said place of business when due and also to pay all proper costs, charges, and commissions and expenses aforesaid. And the said parties of the first part do hereby, nominate, constitute and appoint the said Lorenzo A. Bailey their true and lawful attorney-in-fact, irrevocably, with full power and authority for them and in the name, place and stead of them and each of them, to make, acknowledge and deliver every such assignment and transfer of the license and licenses, lease and leases, rights, privileges, business, good will, fixtures and property aforesaid, and to make, delivery thereof to the purchaser and purchasers thereof at any and every sale hereunder, to effect the true intent and purposes of these presents, hereby ratifying and confirming all that the said attorney shall lawfully do or cause to be done by virtue hereof. It is understood and agreed by and between the parties hereto and by the holders of said notes, that the said party of the second part, his executors, administrators and assigns, shall not be held liable for any act of commission or omission excepting only wilful failure to execute the trusts and, powers aforesaid when requested in writing by the holder of any of said notes to execute the same, or negligence or wrongdoing in the actual execution thereof after such request and also that suitable indemnity shall first be given him on his demand against all damages, costs and liability that may be incurred in and about the execution of said trusts and powers.

36 In testimony whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written and the said party of the second part has hereunto set his hand in evidence of his acceptance of the trusts and powers hereby imposed and conferred upon him.

TIMOTHY SULLIVAN.	[SEAL.]
TERESA R. SULLIVAN.	[SEAL.]
LORENZO A. BAILEY.	[SEAL.]

DISTRICT OF COLUMBIA, ss:

I, John H. Crowley, a notary public in and for the District of Columbia, do hereby certify that Timothy Sullivan, party to a certain deed bearing date on the 1st day of March A. D. 1902, and hereto annexed personally appeared before me in said District the said Timothy Sullivan being personally well known to me as the person who executed the said deed, and acknowledged the same to be his act and deed: And at the same time personally appeared before me in said District, Teresa R. Sullivan, the wife of said Timothy Sullivan, personally well known to me to be such, and acknowledged the same to be her act and deed.

Given under my hand and seal this 10th day of March, A. D. 1902.

JOHN H. CROWLEY,  
*Notary Public, D. C.*

37

Endorsed.

— record Mar. 18, A. D. 1902, 12.38 p. m. and recorded in Liber No. 2648 fol. 11 *et seq.* one of the land records of the District of Columbia.

JNO. C. DANCY, *Recorder.*

*Order Discharging Restraining Order.*

Filed June 5, 1902.

In the Supreme Court of the District of Columbia.

TIMOTHY SULLIVAN	} In Equity. No. 23306.
<i>vs.</i>	
LORENZO A. BAILEY, Trustee.	

This cause came on to be heard upon the motion of the defendant to dissolve the temporary restraining order herein issued on May 7, 1902, and was argued by counsel and submitted, upon consideration whereof it is by the court, this 5th day of June A. D. 1902, adjudged, and ordered that the said restraining order be and the same is hereby dissolved.

A. B. HAGNER,  
*Asso. Justice.*

38 *Motion to Have Order Dissolving Injunction Amended, &c.*

Filed June 13, 1902.

In the Supreme Court of the District of Columbia.

TIMOTHY SULLIVAN	} In Equity. No. 23306.
<i>vs.</i>	
L. A. BAILEY ET AL.	

And now comes the complainant and moves the court to amend the order heretofore made in this cause by having the same conform

to the conclusion or holding of the court at the hearing, by adding thereto: And it is further adjudged, ordered and decreed that the bill of complaint herein be and the same is hereby dismissed.

The complainant further moves the court for leave to withdraw the replication heretofore filed by the complainant herein to defendant's answer.

JOSEPH SHILLINGTON,  
EDWIN FORREST,  
*Attorneys for Complainant.*

*Order Overruling Motion to Amend Order.*

Filed June 13, 1902.

In the Supreme Court of the District of Columbia.

TIMOTHY SULLIVAN  
vs.  
LORENZO A. BAILEY, Trustee. } No. 23306. In Equity.

39 This cause came on to be heard upon the complainant's motion to amend the order heretofore, on June 5, 1902, made in this cause by adding thereto the words, "And it is further adjudged, ordered and decreed that the bill of complaint herein be and the same is hereby dismissed," and was argued by counsel and submitted, whereupon it is by the court this 13th day of June, A. D. 1902, adjudged and ordered that the said motion be and is hereby denied.

A. B. HAGNER,  
*Asso. Justice.*

*Special Appeal.*

Filed June 16, 1902.

Court of Appeals of the District of Columbia, April Term, 1902.

TIMOTHY SULLIVAN, Petitioner, } No. 123, Original Docket.  
vs. } Equity. No. 23306.  
LORENZO A. BAILEY, Trustee.

On consideration of the petition of Timothy Sullivan for the allowance of a special appeal from an order of the supreme court of the District of Columbia, entered herein on the 5th day of June, A. D. 1902, it is now here ordered by the court, that said appeal be, and the same is hereby allowed.

M. F. MORRIS,  
SETH SHEPARD,  
*Associate Justice.*

June 16, 1902.

A true copy.

Test:

[SEAL.]

ROBERT WILLETT, *Clerk.*

40 *Order Fixing Supersedeas Bond.*

Filed June 19, 1902.

In the Supreme Court of the District of Columbia.

TIMOTHY SULLIVAN  
vs.  
LORENZO A. BAILEY, Trustee. } In Equity. No. 23306.

This matter coming on to be heard upon the motion of the complainant to fix the penalty of the supersedeas bond herein to be given by the complainant on appeal to the Court of Appeals of the District of Columbia, on due consideration thereof, it is by the court ordered, this 19th day of June, 1902, that the penalty of such supersedeas bond, be and the same is hereby fixed at twenty-five hundred dollars (\$2500) with surety to be approved by the court.

A. B. HAGNER,  
*Asso. Justice.*

41 Filed Jun- 26, 1902. J. R. Young, Clerk.

In the Supreme Court of the District of Columbia.

TIMOTHY SULLIVAN  
vs.  
LORENZO A. BAILEY, Trustee. } No. 23306. In Equity.

The President of the United States to Lorenzo A. Bailey, trustee,  
Greeting:

You are hereby cited and admonished to be and appear at a Court of Appeals of the District of Columbia, upon the docketing the cause therein, under and as directed by the rules of said court, pursuant to an appeal allowed by the Court of Appeals of the District of Columbia, on the 16th day of June, 1902, wherein Timothy Sullivan is appellant, and you are appellee, to show cause, if any there be, why the decree rendered against the said appellant, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edward F. Bingham, chief justice of the supreme court of the District of Columbia, this 19th day of June in the year of our Lord one thousand nine hundred and two.

Seal Supreme Court  
of the District of  
Columbia.

JOHN R. YOUNG, *Clerk.*

Service of the above citation accepted this 26th day of June, 1902.

THOMAS M. FIELDS,  
*Attorney for Appellee.*

42

*Memorandum.*

June 19, 1902.—Appeal bond filed.

*Order for Transcript.*

Filed June 28, 1902.

In the Supreme Court of the District of Columbia.

TIMOTHY SULLIVAN	}	In Equity. No. 23306.
vs.		
LORENZO A. BAILEY.		

John R. Young, Esq., clerk sup. ct. District of Columbia.

DEAR SIR: You are hereby requested to make up the transcript of record in this case on appeal by the complainant to the Court of Appeals of the District of Columbia; such transcript to consist of true copies of the following papers and documents:

1. Bill of complaint and Exhibit "B."
2. Restraining order.
3. Defendant's answer to bill of complaint; and Exhibit No. 1 accompanying same.
- 43 4. Order dissolving restraining order;
5. Complainant's motion to amend order dissolving restraining order;
6. Order overruling complainant's motion to dissolve restraining order;
7. Special appeal.
8. Memorandum showing amount of supersedeas bond fixed by order of court and the giving of the same by the complainant.
9. Citation.

JOSEPH SHILLINGTON,  
EDWIN FORREST,  
*Attorneys for Complainant.*

June 28, 1902.

44

Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, } ss:  
District of Columbia,

I, John R. Young, clerk of the supreme court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 43, inclusive, to be a true and correct transcript of the record, as per directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 23,306 equity, wherein Timothy Sullivan is complainant, and Lorenzo A. Bailey, trustee, is defendant, as the same remains upon the files and of record in said court.

In testimony whereof, I hereunto subscribe  
Seal Supreme Court my name and affix the seal of said court, at  
of the District of the city of Washington, in said District, this  
Columbia. 8th day of July, A. D. 1902.

JOHN R. YOUNG, *Clerk*.

Endorsed, on cover: District of Columbia supreme court. No.  
1235. Timothy Sullivan, appellant, vs. Lorenzo A. Bailey, trustee.  
Court of Appeals, District of Columbia. Filed Jul- 15, 1902. Robert  
Willett, clerk.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

No. 1235.

## No 11, SPECIAL CALENDAR.

TIMOTHY SULLIVAN, APPELLANT,

LORENZO A. BAILEY, TRUSTEE.

**FILED OCTOBER 29, 1902.**

No. 11, Special Calendar.

TIMOTHY SULLIVAN, Appellant, }  
*vs.* } No. 1235.  
 LORENZO A. BAILEY, Trustee. }

First. The affidavit of James Richardson, filed May 29, 1902, omitting Exhibit No. 1 filed therewith.

Second. The motion of defendant to dissolve the temporary restraining order, which motion was filed in said court on June 5, 1902.

Third. The replication filed in said court on June 9, 1902.

J. SHILLINGTON,

*For Appellant.*

LORENZO A. BAILEY,

*For Appellee, p. p.*

(Endorsed :) No. 1235. Court of Appeals, D. C. October term, 1902. Timothy Sullivan, appellant, *vs.* Lorenzo A. Bailey, trustee. Stipulation of counsel as to addition to record. Court of Appeals, District of Columbia. Filed Oct. 29, 1902. Robert Willett, clerk.

*Order for Copy of Additional Parts of Record.*

Filed October 29, 1902.

In the Supreme Court of the District of Columbia.

TIMOTHY SULLIVAN

*vs.*

LORENZO A. BAILEY, Trustee.

} In Equity. No. 23306.

Counsel for the respective parties in this cause in the Court of Appeals have stipulated that the papers hereinafter mentioned be added to the record in that court.

The clerk of this court will please make and certify a copy of said papers to be added to the record as aforesaid in the Court of Appeals, that is to say :

First. The affidavit of James Richardson filed May 29, 1902, omitting Exhibit No. 1 filed therewith.

Second. The motion filed June 5, 1902, to dissolve the temporary restraining order.

Third. The replication filed June 9, 1902.

LORENZO A. BAILEY, *Defendant.*

*Affidavit of James Richardson, &c.*

Filed May 29, 1902.

In the Supreme Court of the District of Columbia.

TIMOTHY SULLIVAN

*vs.*

LORENZO A. BAILEY, Trustee.

} In Equity. No. 23306.

DISTRICT OF COLUMBIA, ss :

James Richardson, being first duly sworn, says upon his oath as follows :

I am the same James Richardson named in the answer of Lorenzo A. Bailey, defendant to the bill of complaint in the above-entitled cause wherein Timothy Sullivan is complainant. I have read said bill of complaint and said answer. The retail liquor license mentioned and referred to in said bill and answer is a valuable franchise worth in my opinion about \$3,000 or perhaps more. I am president



of Consumers' Brewing Company and have been interested in the retail liquor business in the District of Columbia for 23 years last past and base my said opinion upon actual experience and observation acquired during said period. It has been and is the policy of the excise board of said District to limit the number of bar-room licenses in said District so that the number granted is considerably below the number of applications therefor. Such licenses, under the excise laws and rules and regulations governing the sale of intoxicating liquors in force in the District of Columbia, a copy whereof is hereto attached marked Exhibit J. R. No. 1 and made part of this affidavit, are assignable and transferable and in consequence thereof and of said policy of restriction such licenses have, and the license of said Sullivan mentioned in said bill has, a commercial value which is far in excess of the fee required by law to be paid therefor. The value of every such license also depends upon the amount of business being done and to be done thereunder, and when such license-s have merely a leasehold interest in the premises designated in their licenses, the terms and provisions of every such lease are factors in the computatinn of the value of every such license. As the complainant Sullivan has no lease at the premises No. 3206 M street, northwest, in Washington, D. C., but is merely either a tenant by sufferance or from month to month, and is unable to obtain a lease for said premises, the value of his said license is less than it would be to some other person who could obtain such a lease; but without said license the value of the other property covered by the said existing deed of trust is very inconsequential. The really greatest value of the security lies in the said license itself and keeping the said license, personal property and location intact as they now are; yet said license in and of itself as an assignable asset has a peculiar value greatly in excess of the municipal fee of \$400.00 per annum paid therefor, by reason of the matters and things herein stated. It is and has been the common and usual practice of the excise board to approve assignments and transfers of such licenses; and such assignments and transfers may be made either to persons other than the original licensees for the same or other places, or to the original licensees for other places. Such licenses, under the laws, regulations and practice in force in the District of Columbia, are not mere personal privileges but are pecuniarily valuable, assignable, salable and transferable property and assets for which a municipal license fee of \$400.00 per annum is paid in cash. Such licenses, when once granted, are renewable from year to year indefinitely, merely upon the payment of said municipal fee and compliance with the excise laws and regulations. It is more difficult to procure the original license than to get it renewed thereafter.

And further affiant saith not.

JAS. RICHARDSON.

Subscribed and sworn to before me this 27th day of May, A. D. 1902.

[NOTARIAL SEAL.]

IVAN HEIDEMAN,  
*Notary Public in and for said District.*

*Motion to Dissolve Temporary Restraining Order.*

Filed June 5, 1902.

In the Supreme Court of the District of Columbia.

TIMOTHY SULLIVAN	}	No. 23306. In Equity.
vs.		
LORENZO A. BAILEY, Trustee.		

Now comes here the defendant and moves the court to dissolve the temporary restraining order herein granted May 7, 1902.

THOMAS M. FIELDS,  
*Solicitor for Respondent.*

*Replication.*

Filed June 9, 1902.

In the Supreme Court of the District of Columbia.

TIMOTHY SULLIVAN	}	In Equity. No. 23306.
vs.		
L. A. BAILEY.		

The complainant hereby joins issue with the defendant on his answer herein filed.

JOS. SHILLINGTON,  
EDWIN FORREST,  
*Attorneys for Complainant.*

Supreme Court of the District of Columbia.

I, John R. Young, clerk of the supreme court of the District of Columbia, do hereby certify the foregoing to be true copies of originals on file in said court in cause No. 23306, in equity, wherein Timothy Sullivan is complainant and Lorenzo A. Bailey, trustee, is defendant, omitted from the transcript of record heretofore transmitted to the Court of Appeals.

Seal Supreme Court  
of the District of  
Columbia.

In testimony whereof, I hereunto subscribe my name and affix the seal of said court, at the city of Washington, in said District, this 29th day of October, A. D. 1902.

JOHN R. YOUNG, *Clerk.*

[Endorsed:] No. 1235. Timothy Sullivan, appellant, vs. Lorenzo A. Bailey, trustee. Addition to record per stipulation of counsel. Court of Appeals, District of Columbia. Filed Oct. 29, 1902. Robert Willett, clerk.

